



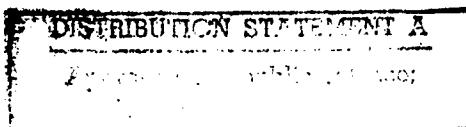
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AN HISTORY OF THE DEVELOPMENT OF  
FRATERNIZATION POLICIES

THESIS

Jeffrey C. Russell, Captain, USAF

AFIT/GAL/LAC/98S-8



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FRATERNIZATION POLICIES

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In Partial Fulfillment of the Requirements for the  
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Jeffrey C. Russell

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## **Abstract**

Criticisms of the Air Force's fraternization policy predominantly conclude that the prohibition of fraternization is based upon a caste system, which evolved from the class divisions of the middle ages, and is designed to maintain those social divisions. The Air Force maintains that fraternization policies are necessary because fraternization adversely affects morale and discipline.

This study uses qualitative research methods, ethnography and grounded theory, to consider the impacts of military customs, military structure, and societal structure to analyze the evolution of fraternization policies through Western military history as they relate to the development of the current Air Force policy.

This study traces the development of fraternization policies through the Roman military, the middle ages, the national European armies preceding the American Revolution, and American history through the evolution of the Air Force.

The study concludes that parallels between military ranks and social classes simplified enforcement of fraternization policies; however, the historical purpose of prohibiting fraternization was based on the need to maintain good order and discipline, not to maintain a social caste system. This purpose has been consistent throughout Western military history. The current Air Force policy is consistent with the historical purpose: to maintain good order and discipline.

# **AN HISTORY OF THE DEVELOPMENT OF FRATERNIZATION POLICIES**

## **I. Background**

### **Problem**

On July 16, 1997, Sheila E. Widnall, the Secretary of the Air Force, and General Ronald R. Fogleman, Chief of Staff, United States Air Force, issued a memorandum attempting to clarify the Air Force policy on fraternization. The memorandum, entitled "Update – Fraternization and Unprofessional Relationships," states,

To maintain trust and confidence in the decisions of officers, subordinates must believe that these decisions [to order inconvenience, hardships, and in time of war, injury or death] are motivated not on the basis of personal friendships but by what is best for the organization and accomplishment of the mission. (Fogleman and Widnall, 1997)

The above statement summarizes the Air Force justification for prohibiting fraternization. However, the public seems to have a different perspective on the purpose of prohibiting fraternization. Major General Jeanne Holm's perception of the origin of fraternization policies appears to summarize the public perception well. Her description follows:

The military social caste system is probably as old as the military itself. That which has been part of the U.S. armed forces has its roots in European custom, from which the early American military borrowed most of its traditions. By custom, an officer was a "gentleman," presumably of good family, who either inherited or could afford to buy his officer's commission. The enlisted personnel or "other ranks" were "the men," presumably from the lower classes. Gentlemen did not socialize with the lower classes. Custom, not law, dictated social activities and preserved the class distinctions. (Holm, 1992, 73)

According to Holm, the purpose of prohibiting fraternization is to maintain an obsolete caste system, where officers are forbidden from associating with subordinates only to maintain the privileged social position of the former. The belief concludes that the United States military

inherited these outmoded policies through tradition. To maintain the custom, the justification was changed from social privilege to that of good order and discipline. This perception dominates the culture that surrounds the Air Force. Public reactions toward recent highly publicized cases have been highly critical of the fraternization policies of the armed services in general. The following three cases demonstrate some of the fraternization problems which plague the Air Force, problems which often receive public scrutiny and comment.

In 1997, Lieutenant Kelly Flinn was involved in a highly publicized case that seemed to invoke the wrath of the public. Bharges against Lieutenant Flinn included failure to obey a lawful order and adultery. However, she had also been previously counseled for fraternization, so that her fraternization exploits were also under public debate. Frequently cited statistics suggested that 77 percent of respondents replied that unit sexual activity had no effect on morale or discipline (Rules 1). The slogan, "keep the government out of the bedroom," appeared to dominate the majority of public talk forums (Rules 1). Lieutenant Flinn was granted separation in lieu of a court-martial, but the Air Force's difficulty in conveying—through the public media—the reasoning behind the policies, which will affect the public's perception for years to come.

In another case, Lieutenant Colonel Shelley Rogers, the commander of the 90<sup>th</sup> fighter squadron, was convicted of fraternizing with his intelligence officer (Bird 1997, 12-16). Three officers from the squadron were charged, leaving the squadron in turmoil and causing morale to plummet. The Air Force maintained that the prosecution of the officers was necessary to maintain good order and discipline, while critics argued inconsistency of policy and using fraternization to get people who "don't buy into the program and agenda" (Clemm, 1997, 13). This case demonstrated the turmoil a single case of fraternization can cause in a unit.

Another recent case dealt with Captain Douglas Chin, who is currently (at time of writing) appealing a case of fraternization. The ground for the appeal is that a recent change in Air Force policy is "inflexible and unworkable" (Pulley, 1998, 6). Under the policy prior to

General Fogelman, Chin's fraternization would probably have gone unprosecuted, since it was outside the chain of command.

Therefore, the problem arises concerning the purpose and validity of prohibiting fraternization. Does the prohibition of fraternization have a specific purpose within today's Air Force, as General Fogelman and Dr. Widnall state, or is the custom prohibiting fraternization an antiquated remnant, dragged on by tradition? If there is an actual purpose to prohibition of fraternization, what were the original criteria for prohibiting fraternization? Have fraternization policies evolved from their original purpose, and if so, how?

The purpose of this thesis is to uncover the evolution of fraternization policies: Did the Air Force inherit these policies only as an obsolete tradition, or because these policies have merit apart from tradition?

## **Definition**

This thesis examines the purpose of prohibiting fraternization within military groups. AFI 36-2909 defines fraternization as "an aggravated form of unprofessional relationship" (AFI 36-2909 2.2). The instruction further defines unprofessional relationships as personal relationships "which detract from the authority of superiors or result in, or reasonably create the appearance of, favoritism, misuse of office of position, or the abandonment of organization goals for personal interest" (AFI 36-2909 2.2).

Numerous other definitions of fraternization exist. Other armed services have different variants of the definition of fraternization. Fraternization can also be subdivided into specific types such as male-male, female-female, female-male, and sexual or non-sexual. This thesis will not distinguish between those types of fraternization. Fraternization is considered only between superiors and subordinates, irrelevant of nature of the relationship and genders of the participants.

Fraternization can also refer to inappropriate relationships with an enemy. Fraternizing with the enemy is not considered by this thesis.

## **Background**

**Literature Review.** Relatively little has been written on the subject of tracing the evolution of the prohibition of fraternization to determine original criteria. Several researchers have traced the legal development in the context of court policies from the creation of the Air Force following World War II. It is interesting to note that most of these studies were based on the Air Force experience, as opposed to the experiences of the other services. Another point of interest is that the studies cited tend to disregard fraternization policy development in the nineteenth century. The period from the early 1800s until World War I is largely ignored by these studies. Most researchers have looked at the current policies and recommended changes to make the policy prohibiting fraternization more palatable and/or more enforceable.

**Frequently Cited Literature.** Four pieces of literature lay the most complete foundations for studying the development of policies prohibiting fraternization. Almost all works that study fraternization succeeding the publication of these works borrow material with little variation when discussing historical developments preceding World War II. Two of these works are research studies, which are subsequently discussed: McDevitt's 1984-1985 article, "Wrongful Fraternization as an Offense Under the Uniform Code of Military Justice," and Carter's 1986 work, *Fraternization*. Another is the Military Justice Reporter review of United States v. Johanns. Almost all studies dealing with fraternization policies seem to spend a disproportionate amount of time discussing the US v Johanns case. The final document frequently cited is Colonel Franklin P. Flatten's essay on fraternization.

The Air Court of Military Review opinion regarding the 1983 United States v. Johanns case was the most influential document in the development of Air Force policy concerning fraternization, according to most succeeding literature. This case highlighted the contradictions in Air Force policy and commented on the development of fraternization policies. Important in this document was the footnote that stated that bans against fraternization can be traced to Gustavus Adolphus' Code of Articles, 1621 (US v Johanns 876).

Examining fraternization from a legal aspect, McDevitt discussed the development of fraternization starting with early British Military Law. She noted that the British borrowed from King Gustavus Adolphus' articles of war, which barred behavior "repugnant to military discipline" (McDevitt, 1984-1985, 555). McDevitt also traced the development into early American law and the addition of the prohibition of fraternization. Finally, she studied the development of the Uniform Code of Military Justice and its role in prohibiting fraternization.

Carter's study contained the most comprehensive policy development narrative of all fraternization studies examined. This study described the development from the Roman era to the present. Carter presented the idea that the current policy against fraternization actually evolved from the middle ages as a method of preserving class distinctions between nobility and common (Carter, 1986, 62-66). Carter noted that the policy evolved from a method of maintaining class distinction to a method of preserving discipline in the early American armies (Carter, 1986, 73). The bulk of Carter's work recounted twentieth century challenges and issues and their effects on fraternization policies.

The final frequently-cited work is Flatten's "Fraternization." This essay was introduced as evidence in the pivotal court case United States v. Johanns (868-869). The conclusions of this essay directly impacted the Air Force Court of Military Review's decision in that case. Flatten described the current (1981) condition of Air Force policy and concluded that the custom prohibiting fraternization was "losing its vitality" (Flatten, 1981, 113).

**Other Literature.** Wright studied the development of policies forbidding fraternization from two perspectives, historical and judicial. Her historical account is a summary of Carter and McDevitt's work. Her judicial review tracked the Uniform Code of Military Justice and the impact of United States v. Johanns. Wright argued that Gustavus Adolphus regulated contact between officers and men to maintain social status (Wright, 1987, 1-2, 4-5). Wright concluded that the Air Force policy is characterized by ambiguity that will lead to future problems.

Devereaux, 1988, accomplished a thorough study of Air Force fraternization policy. His research effort had two main goals: first, to determine the current status of the Air Force fraternization policy based on Air Force actions and guidance; and, second, to produce a policy booklet to clarify the policy for Air Force commanders. The study relied on Wright's analysis for historical framing of the problem.

Bondaruk and Focht accomplished a general study on the background and current situation on prohibiting fraternization. This study was written at the same time as the McDevitt study and preceded the Carter study; therefore, it did not rely on McDevitt's or Carter's work to describe the historical development of the custom prohibiting fraternization. Bondaruk and Focht describe that fraternization supported a "caste" system to maintain social distinction since the feudal ages. This prohibition was maintained until "nobility lost its monopoly on officer status" (Bondaruk and Focht, 1985, 6).

Mahoney, 1988, traced the degradation of the Air Force's fraternization policy from World War II until the United States v. Johanns decision. He analyzed legal cases, regulations, actions, and written policies to conclude that the Air Force unintentionally damaged its ability to enforce the prohibition against fraternization.

Several other studies reviewed fraternization policies and made recommendations to eliminate ambiguity. Thomson, 1986, conducted a review of the history of fraternization. He

cited US v Johanns frequently when tracing the historical development. On a recurrent theme, Thomson stated that the ban against fraternization was to maintain the social distinction between gentleman officers and peasant soldiers. A 1986 study by Cordon reviewed the development of fraternization policy and recommended actions for the Air Force to take. Wilson, 1986, discussed the Air Force policy and concluded that the policy was consistent, but needed clarification. David Jonas, 1992, conducted a review of fraternization policies, predominantly citing Carter's work. In addition, Jonas conducted a review of international armed forces other than the United States. Finally, Canter conducted a two-part study. The first portion traces the development of fraternization from World War II to his current time. The second portion gives the result of a survey. Canter concluded that the majority of Air Force members felt that the Air Force's policy concerning fraternization was unclear and unevenly enforced (Canter, 1984, 30). Interestingly, Canter did not accept the premise of most of the other studies concerning the development of fraternization policies from a caste system. Rather, Canter stated that fraternization policies have "historically been based on the need to exercise authority and maintain discipline" (Canter, 1984, 3).

**Summary of Literature Review.** With few exceptions, writers studying fraternization policies accept the following premise: fraternization policies arose from the middle ages as a method to maintain the social class distinction of the nobility-dominated officer corps, i.e., to maintain a caste system. Most agree that fraternization policies transitioned from the caste justification to the "maintain good order and discipline" justification during the American Revolution. Therefore, according to the reviewed literature, noble-peasant class distinction, not proper leadership, formed the foundation from which today's prohibition of fraternization evolved.

**Prohibition of Fraternization as a Custom.** Throughout military history, most cases involving fraternization were considered contrary to the customs of the service. The term “fraternization” in its modern definition does not appear throughout history. The term is fairly recent; according to Carter, “fraternization” was not named until the 1943 court case United States v. Bunker (Carter, 1986, 62, note 2). Therefore, restrictions prohibiting fraternization prior to United States v. Bunker were not always explicitly stated and may have been lost in translations or not addressed as a specific custom.

**Military Customs.** Fraternization has not been directly forbidden by the Uniform Code of Military Justice or its forerunners (Mahoney, 1988, 156). Rather, the prohibition of fraternization has developed as a custom of military service. The Manual for Courts-Martial defines a custom as follows:

Custom means more than a method of procedures or a mode of conduct or behavior which is merely or frequent or usual occurrence. Custom arises out of long established practices which by common usage have attained the force of law in the military or other community affected by them. No custom may be contrary to existing law or regulation. A custom which has not been adopted by existing statute or regulation ceases to exist when its observance has been generally abandoned. (Manual for Courts-Martial United States 1995, IV-93)

A custom is enforceable as long as it is practiced within the military. However, if a custom is broken, it can be reestablished only by a long period of re-acceptance and practice of that custom. Violations against customs can be enforced if the violations are “found to be prejudicial to good order and discipline” (Egeland, 1983, 17). In current times, these customs are explicitly encoded within military regulations such as AFI 36-2909. However, throughout the evolution of armies from the times predating the Romans until the release of AFI 36-2909, the prohibition of fraternization was often enforced as a custom, subject to those clauses of written law which banned disorderly practices not banned by other clauses (McDevitt, 1984-1985, 555).

**Uniform Code of Military Justice.** Two articles are used to prosecute fraternization under the UCMJ: Article 92 and Article 134. Article 92 is used to punish violations of regulations (Manual for Courts-Martial United States 1995, IV-93). Article 134 is a general article that addresses offenses not listed elsewhere in the UCMJ (Manual for Courts-Martial United States 1995, IV-93). In addition, throughout the nineteenth century, the forerunners of Article 133 were used for any case that involved an officer.

Article 134 of the UCMJ, entitled “General Article,” is the descendant of military law from the time of Gustavus Adolphus. Article 134 follows:

Though not specifically mentioned in this chapter [lists of offenses], all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court. (Manual for Courts-Martial United States 1995, IV-93)

Violations of customs of services can be interpreted to fall under the clause in the preceding citation: “disorders and neglects to the prejudice of good order and discipline in the armed forces.”

Article 92 of the UCMJ states that:

Any person subject to this chapter who—  
(1) violates or fails to obey any lawful general order or regulation;  
(2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey; or  
(3) is derelict in the performance of his duties; shall be punished as the court-martial may direct. (Manual for Courts-Martial United States 1995, IV-23)

Article 92 is used to prosecute fraternization when it is clearly defined by a regulation, such as AFI 29-2902. Regulations directly forbidding fraternization are relatively recent. Before the advent of regulations similar to AFI 29-2902, fraternization was prosecuted under articles of war similar to Article 134 of the UCMJ.

In addition to the aforementioned two articles, Article 133 of the UCMJ, the article forbidding “Conduct unbecoming an officer and a gentleman” (Manual for Courts-Martial United States 1995, IV-92), is relevant to the discussion of early American history.

## **Scope**

This study is limited to the evolution of fraternization policies from a United States Air Force perspective. Fraternization between officers and subordinates is addressed. Gender-specific fraternization issues are outside of the scope of this study. The aim of this thesis is descriptive, not prescriptive. Issues, such as the best way to implement fraternization policies, are not addressed. Detailed legal analysis is not addressed; several studies cited in the literature review detail the legal development of fraternization from case to case.

## **Research Question**

The research question for this study is “What is the traditional foundation upon which the United States Air Force’s bases its decision to maintain and enforce policies prohibiting fraternization?” It is necessary to determine the original historical criteria for developing fraternization policies and to trace the evolution of these policies to current times.

## **Investigative Questions**

- *What were the original/historical criteria for prohibiting fraternization?* This information is used to determine if the current policies on fraternization follow the historical traditions.
- *How have the policies concerning fraternization evolved throughout history?* Information regarding the evolution of fraternization policies until current adoption is used to determine if fraternization policies were inherited for tradition's sake—to enforce class statuses—or for reasons of necessity.

- *Is the current justification consistent with the logical evolution of fraternization policies?*

The answer to this question ties the 50-year development of Air Force policy within the framework of the historic development.

## **Introduction to Methodology**

The methodology is conducted in the following manner: a thorough review of classical literature and military history is conducted to determine the history of fraternization. Current literature and personnel policies of civilian organizations are reviewed to determine if civilian institutions have policies and justifications regarding fraternization. A review of military policies and regulations is conducted to compare and contrast historical justifications with current policy.

The approach to the literature review is interpretive, understanding that meanings are based on social constructions such as language. The methodology consists of two approaches: ethnography and grounded theory. Ethnographically, each historical military must be viewed within the context of its society. Using the grounded theory approach, this study proposes a theory concerning the purpose of and evolution of policies prohibiting fraternization.

Methodology is discussed further in Chapter II.

## **II. Methodology**

### **Nature of Data**

The data sources used for this study are historical and current literature. For categorization purposes, five types of sources are examined. The first is law, as defined in court cases--not necessarily United States courts. These cases discuss the contemporary situation and render the binding opinion of the court. They are relevant in that they are actual milestones in the evolution of fraternization policies. The second type of source includes regulations. Regulations define the policies of the affected society in the most direct manner possible. The third type of source consists of narratives. This type, the dominant type used in this study, recounts the events and context surrounding a time period or situation. The fourth type consists of previous theses and dissertations, which tend to take a summary approach to history and focus mainly on Air Force law. The final type of source used is current journal articles that generally use a case study methodology.

By nature, the data studied is secondhand, subject to biases by the author of the work and the interpreter of the work. The data--policies and categories of words--are qualitative and immeasurable words, which directly represent the concept under study. The data must be considered within the context in which it was written.

### **Approach**

This thesis uses an interpretive approach. In interpretive research, access to reality "is only through social constructions such as language, consciousness, and shared meanings" (Myers, 1998). The aim of interpretive research is to gain an understanding of phenomena through the meanings that the authors assign to the text.

## **Qualitative Methodologies**

Two qualitative research methodologies are used for data collection: Ethnography and Grounded Theory.

**Ethnography.** Ethnography attempts to understand the values or norms of a culture, within the context of the culture. Ethnographic research looks at aspects of the culture and determines the impacts on the phenomena (Stohrer, 1998). In this case, how society provides its officers to the military directly impacts the societal structure of the military. The officer corps of traditional European standing armies consisted mainly of members of the aristocracy, while the enlisted corps was formed from prisoners and commoners. To conclude, therefore, that the purpose of fraternization prohibition was based on the composition of the military society compared to the culture of the time may be shortsighted. It must be determined whether the culture and the fraternization policies are dependent. Several questions are shown below to illustrate the need for an ethnographic approach:

- Does the military hierarchy segregate itself in a manner consistent with the divisions within the culture? If officers tend to come from one social division in society, and enlisted come from another division of society, there will be less probability of social interaction among the officers and enlisted. When officers and enlisted are drawn from a common pool, the restriction of social interaction becomes contrary to the values of each individual in the military, and, therefore, violations of the restriction become more likely to occur.
- Does the culture have an impact on the ease of enforcement of fraternization policies? Segregation within the military that does not reflect that of society dictates that military members must maintain social habits that are contrary to their values formed by their culture. Society will be less likely to understand the social structure within the military,

and therefore, will be less likely to tolerate prohibition of fraternization. When military hierarchies reflect societal classes, enforcement of fraternization becomes less difficult: the norms of the culture will assist in the enforcement of the policy. Otherwise, the norms of society will work against enforcement of the policy.

- Does the fraternization policy have a purpose other than maintaining the divisions within the culture? Fraternization policies built to maintain societal stratification may do little to add to the effectiveness of the leadership within the military. In this case, the policy will have little relevance when inherited by a military that does not use classes derived from society.

One problem with analyzing this data is that even within short time periods, culture, military organizations, and policies can change dramatically. As an example, the Roman Empire spanned many centuries; within Rome, factors affecting this discussion were constantly evolving. To make this thesis possible, it has been necessary to simplify and generalize the changes into those most characteristic of each time period. Taking multiple generations and characterizing them as one period may introduce errors into the ethnographic study.

**Grounded Theory.** Grounded theory is an inductive qualitative research method that attempts to induce theory while “grounding the account in empirical observations or data” (Myers, 1998). This thesis attempts to look at textual data and induce a theory or theories about the purpose of fraternization. A grounded theory study attempts to develop categories and concepts that explain reality.

## Data Analysis

The analysis of data incorporates a hermeneutic approach to textual analysis. Hermeneutics can be traced as far back as Flacius, who, in 1567, emphasized the importance of resolving ambiguities in Biblical passages by examining the context in which the passage is

contained (Vaughan, 1998). The hermeneutic methodology iterates between the text under study and the context in which the text was developed. There are multiple levels at which the hermeneutic approach operates. Words must be understood within the context of the sentence; sentences within paragraphs; paragraphs within the work; and the work to other works, the audience, and values of the time (Vaughan, 1998).

The analysis uses a branch of semiotics known as content analysis. Content analysis searches for structures and patterns within the text. Intention and meaning can be explicitly stated, or implicit in nature. Larger meanings are derived from patterns of smaller meaning (Vaughan, May 1998).

The texts are coded using the following categories: references to the societal composition of the military compared to the culture, modes of discipline and stated purposes, other types of discipline that infer the need for prohibiting undue familiarity, expected superior-subordinate relationships, and case opinions that affected fraternization policies.

### **III. Historical Discussion Preceding the American Revolution**

#### **Rome**

The Roman army was one of the earliest armies with documented hierarchical structures that clearly divided leadership from subordinates (Delbruck, Vol I, 430). Also, the Roman army is the earliest found that regulated interaction between ranks. Winthrop states that the Greeks also had written military law, but none of the Greek codes survived (Winthrop, 1920, 17).

One of the problems with classifying the Roman armies is the expanse of time over which Rome existed. The republic of Rome was founded in 509 BC, under the leadership of a Senate, whose members came from noble families (Addington 1990, 26). The republic lasted until about 31 BC, marked by civil wars and the rise of Caesar. The age of Imperial Rome started with Octavian Caesar and lasted until the fall of the Roman Empire in the 5<sup>th</sup> century.

The evolution of Rome was matched by an evolution of the organization of the Roman armies. A legion, commanded by a tribune, originally consisted of 1000 men divided into 10 centuries, each led by a centurion (Addington 1990, 26). After 326 BC, the legions were modified into 6000-man units, each legion of 60 men divided into 10 cohorts (Addington 1990, 27). Many reorganizations followed; however, the basic concept behind the legion was changed little (Addington, 1990, 26-45). Heavy infantry were drawn from the citizen farmers, lower classes provided light infantry to the Roman war machine, and the wealthy patrician class contributed to the Roman cavalry (Addington, 1990, 26).

The Roman army was the earliest traceable army that had a “marked distinction” (Delbruck, Vol I, 430) between an officer corps and the men that served in the armies, something which even the Greeks had not achieved (Delbruck, Vol I, 430). Members of the Roman senate usually made up the generals of the Roman armies (Peddie, 1997, 1). These generals’

qualifications for leadership in the military were based on birth and individual wealth, not on military ability (Peddie, 1997, 1). The equivalent of today's field-grade officers came from two types of classes: aristocratic and middle class merchants, called "knights" by Delbruck (Vol 1, 429). The centurions, considered to be the equivalent of today's company grade officers and senior non-commissioned officers, held the core knowledge and experience of the Roman armies. Centurions generally had 15 to 20 years of experience and were promoted on ability and experience (Peddie, 1997, 30). The centurions were originally recruited from the same uneducated factions of society as the common soldier (Delbruck, Vol I 431). Their social status remained relatively unchanged under the republic. Under imperial Rome, the centurions' pay rose from two times that of a common soldier to five times (Delbruck, Vol II, 168), allowing the centurions to elevate their social status. Tribunes were also promoted through the ranks. The tribunes, experienced men often at the age of 60 years, were first required to command a cohort and a legion before being promoted to their grade (Ayala 1912, 180). However, the tribunes were drawn from the patrician class early in the history of Rome (Addington 26).

Roman military law forbade any captain from serving in the same organization where he had previously been assigned as a tribune (Ayala 1912, 180), presumably to avoid undue familiarity with those in the ranks with whom he had previously served (Carter, 1986, 62).

Two patterns arise. First, the Roman military formally regulated relationships between military ranks within its hierarchy. Second, the Roman military permitted social mobility within the military apart from society. No clear anti-fraternization policy is evident yet, but there is evidence of the beginnings of regulations between the ranks in a military structure that does not necessarily match the civilian social classes.

## **Transition to the Middle Ages**

The Middle Ages were characterized by strong class divisions known as the feudal system and a regression from the discipline and organization of the Roman armies. The Middle Ages spanned a large period of time, from the decline of the Roman empire, covering the Byzantine empire, the crusades, up through the fifteenth century. Vassals and knights characterized military organizations during this large span of time. Vassals appeared around the seventh century (Delbruck, Vol II, 431). Vassals were replaced by knights starting around the tenth century (Coss, 1996, 5).

**Vassals.** The term “vassal” referred to warriors who were indebted to serve nobility (Delbruck, Vol II, 431). These warriors generally served the private individual nobles, rather than the state. Delbruck states that vassals become prevalent during the seventh century (Vol II, 431). These vassals “committed themselves to an obligation of loyalty … toward a man who was not their king” (Delbruck, Vol II, 431). Vassals were considered to be free men, although they were subject to their lord.

Delbruck cites several reasons for the rise of vassals as opposed to large armies characteristic of the Greek and Roman eras. First, the “illiterate masters” of the nations were incapable of properly administering an army. Second, the men in that type of culture would not tolerate the harsh discipline of an organized military. Finally, the barter economy was a poor tax base for supporting armies (Delbruck, Vol II, 432). Delbruck points that the formation of a “special military class” is the only type of military that could be sustained during the middle ages (Vol II, 432).

To maintain the professional military class of vassals, in peacetime as well as in wartime, the concept of fiefs was established. A fief was the practice of nobility giving land to the vassals in exchange for military service and loyalty. Generally, fiefs were not hereditary, unless the next

generation was capable of producing a man fit to serve as a vassal to the lord. Requiring a fit heir to a fief ensured that the lord would have the loyalty of his warriors across the generations (Delbruck, Vol II, 433-4). These vassals, although free, were economically poor, often as poor as the peasant class (Delbruck, Vol III, 226). However, as fiefs passed along the generations, the vassals were able to carve out a military class. Eventually, every holder of a fief was considered to be a “gentleman” (Hallam, 1858, 85). However, this military class was not integrated with the nobility (Coss, 1996, 7).

**Knights.** The class of Knights evolved from vassals. Nobles exerted a limiting influence on the monarch, and knights exerted a limiting influence on the nobles; therefore, the monarchs were interested in maintaining and strengthening the knight class (Delbruck, Vol III, 228).

During the Middle Ages, the traditional branches of military, infantry and cavalry, disappeared in favor of individual mounted warriors. These warriors were supported by personal assistants and, often, light footsoldiers (Delbruck, Vol III, 234). For each knight, personal victory was as important, if not more important, than victory of the army. As a result, personal discipline was lacking and unenforceable (Delbruck, Vol III, 286). In battle, leadership was often supplied by the lords to whom the knights were bound, rather than by monarchs or by the equivalent of generals (Coss, 1996, 58).

By this time, the knights had formed a distinct class, separate from nobility, based on the knowledge and ability to wage war. However, the members of this class did not all share the same social statuses and birthrights (Coss, 1996, 7). Those warriors of modest rank were able to elevate their status through demonstration of worth. In Normandy, many of the knights came from the more humble ranks (Coss, 1996, 8). Interestingly, tournaments among knights were often used to determine rank. In preparation for crusades, tournaments were held to determine

promotions for knights (Coss, 1996, 58). Despite the opportunity for social mobility within the military class, there were penalties associated with associating with the peasant class. In France and Germany, holders of fiefs could not exercise trade, nor marry within the peasant class, without a loss of rank (Hallam, 1858, 86). By the thirteenth century, the financial burden required to maintain status as a knight drove many of the less financially able families out (Coss, 1996, 69), which effectively raised the status of the military class.

**Summary of Middle Ages.** The middle ages gave way from the massive legions of the Roman empire to individual armies raised by those wealthy enough to afford them. Strict class structures were maintained within society; however, the military class of vassals and knights never became a true noble class. As with the Romans, knights were able to move within the ranks based on ability. However, the costs associated with maintaining equipment and support eventually forced the less wealthy families out of this elite military class.

### **Standing European Armies following the Middle Ages**

The end of the Middle Ages was marked by several social and military changes. Monarchs rose to become the absolute rulers of nations. The vassal system transitioned to form officer corps, while ranks were filled by conscription (Delbruck, Vol IV, 223). The armored knights were replaced by cavalry (Delbruck, Vol IV, 117-29). An increased emphasis on discipline, uncharacteristic of the middle ages, was enforced throughout these armies (Delbruck, Vol IV, 223-4). This section covers the period from the end of the middle ages until the American Revolution.

As a general rule, promotions above the grade of Colonel were determined by the monarch. Promotions below the grade of Colonel were decided upon by the Colonel of the regiment. Three systems of determining regimental promotions were in place: purchase, seniority, and merit. The majority of European countries during this time period used at least

one, if not all, of these methods. Colonels practicing the purchase method simply gave the promotions to the highest bidder, or at least one of his more favorite officers who paid a reasonable sum of money. Seniority promotions were based purely on either date of rank or date of unit's muster. Merit-based promotions, which on the surface appeared to be the most just, were extremely subjective (Duffy, 1997, 61-66).

The four nations discussed below are Sweden, Prussia, France, and Britain. Sweden is discussed because King Gustavus Adolphus formed the first "national" army which became the model army for the time period. The other three nations are discussed because they played a role in the development of the continental army of the American Revolution. Marquis de la Fayette, a French officer, and Friedrich Steuben, from the army of Frederick the Great, served the American military (Addington 1984 13). Several American officers held commissions in the British military. The primary British contribution to the American military were the Articles of War, which the Americans adopted (McDevitt, 1984-1985, 556).

**The Armies of Sweden.** This period begins with King Gustavus Adolphus in the early seventeenth century through Gustavus III near the end of the eighteenth century.

**King Gustavus Adolphus.** In the early 1600s, King Gustavus Adolphus of Sweden raised a standing army of over 40,000 Swedish men (Addington 1990 83). This army became the model of the European standing armies which followed. King Gustavus developed many military innovations, including the successful use of conscription in its current meaning. Eventually, after foreign officers and soldiers were accepted, Gustavus Adolphus' army grew to over 70,000 men (Delbruck, Vol IV, 174).

Swedish society was divided into four classes: nobles, clerics, burghers, and peasants (Delbruck, Vol IV, 173). In general, it appears that the distinction between the noble and the

peasant classes was preserved within the armies of Gustavus Adolphus. The officer corps was filled by Swedish nobility. Enlisted ranks were filled by the people (Delbruck, Vol IV, 174).

In 1621, Gustavus Adolphus enacted the Code of Articles of King Gustavus Adolphus of Sweden (Winthrop, 1920, 907). Of these, two are considered important in the evolution of fraternization policies, articles 116 and 133 (McDevitt, 1984-1985, 555). Article 116 forbids conduct contrary to military discipline:

Whatever is not contained in these articles, and is repugnant to Military Discipline, or whereby the miserable and innocent country may against all right and reason be burdened withall, whatsoever offence finally shall be committed against these orders, that shall the several Commanders make good, or see severally punished unlesse themselves will stand bound to give further satisfaction for it. (Winthrop, 1920, 914)

Close investigation of Article 116 reveals the elements of enforcing customs as defined in the Military Customs section earlier in this chapter. The commanders are bound to punish any action unless they are willing to support that action--“give further satisfaction”--as no longer contradictory to good order. This article is a forerunner to Article 134 of the UCMJ, which is also used to punish breaches of custom.

Article 133 states “If any captaine lends money unto his souldiers which he desires should be paid again; that must be done in the presence of the Muster-masters, that our service be no way hindered or neglected” (Winthrop, 1920, 915). This latter article demonstrates regulation between the different ranks within the Swedish army.

Other articles in Gustavus’ code delegate authority to the common soldier not expected for the typical person of the peasant social class. Article 45 reads as follows:

All Souldiers ought diligently to honour and obey Officers, and especially being by them commanded upon service; but if at any time they can on the contrary discover that they are commanded upon a service which is to our prejudice any manner of way; then shall that souldier not obey him what charge soever he receives from him, but is presently to give notice of it. (Winthrop, 1920, 909-910)

This article basically obligated the common soldier the ability to determine if a directive is given that is contrary to the interest of the kingdom. This article seems out of place in an army

where the officers are nobles and the soldiers are peasants. The necessity of not following improper orders takes precedence over the maintenance of class distinctions.

**Gustavus III.** The exclusion of peasants from the officer corps did not continue. Gustavus III frequently used commoners in the officer corps. In 1780, approximately 25 percent of the Swede officer corps was composed of peasants. By 1790, the number of commoners in the officer corps rose to 34 percent. Gustavus III even replaced several nobles with “more reliable” commoners in 1788 (Corvisier, 1979, 159).

**Summary of Sweden.** Patterns in the evolution of prohibition of fraternization are resident in the armies of King Gustavus. First, the Swedes regulated interactions between ranks. Second, the Swedes punished breaches of custom. Finally, the Swedes began using commoners across social boundaries to fill their officer corps.

**The Armies of Prussia.** During the seventeenth century, many commoners served within the Prussian officer corps. This practice changed in the eighteenth century during the reigns of Frederick William I and Frederick the Great. These monarchs preferred nobility to the lower classes, due the perceived superiority of the noble class’s “honor, loyalty, and courage” (Huntington, 1957, 23). The bourgeois officer commanded less respect (Duffy, 1997, 44).

Promotions within Prussia were generally determined by the merit system. Prussia was remarkably free of use of the purchase system (Duffy, 1997, 61). However, merit was subjective, as political considerations often defined merit (Huntington, 1957, 24). Often, young noblemen were required to serve in the noncommissioned officer ranks as a form of an apprenticeship. They were required to perform the duties expected of their ranks. Officers were forbidden to show favoritism toward these noble apprentices; they were treated no differently than a common soldier (Duffy, 1997, 42). In 1808, the Prussian government eliminated purely class-based

commissions. All individuals who possessed education, professional knowledge, and valor were capable of becoming military officers (Coates and Pellegrin, 1965, 206).

**The Armies of France.** Aristocracy dominated the French officer corps by the eighteenth century. Within France, this practice was taken to an extreme; the size of the officer corps was set by the number of nobles staking the right to serve, which resulted in a grossly oversized officer corps. Promotions within France were based upon the purchase system until 1776. After that time, birth status rather than wealth became the prerequisite for advancement within the French army (Huntington, 1957, 22-23). The governing logic stated that the “ultimate officer was [a] poor but dedicated provincial noble who devoted his entire life to the army” (Lynn, 1996, 69). By 1781, an officer had to demonstrate at least four generations of “impeachable” nobility to serve as an artillery or engineering officer (Duffy, 1997, 38). Contrary to the Prussian apprentice example, rank was often subordinate to status within the French army. Superior officers often yielded to lower ranking officers from more distinguished families (Huntington, 1957, 27).

Prior to 1789, officers had little to do with their men. The officers took seven and a half months of leave every two years. Daily leadership was delegated to the noncommissioned officers, as the officers went about their aristocratic ways (Lynn, 1996, 92).

The French Revolution transformed the composition of the officer corps dramatically. In 1793, only 10 percent of the officer corps consisted of nobles. The middle class accounted for the majority of officers; even the peasant class comprised 16 percent of the officer corps (Lynn, 1996, 72). As the revolution went on, officers of aristocratic background were viewed with suspicion and eliminated from the officer corps. Fear of the revolution forced many officers to become more open with their men (Lynn, 1996, 93).

**The Armies of Britain.** The British military is the most relevant of the examined nations, because the original corps of United States military officers consisted primarily of former British officers. In addition, early American military laws were derived directly from British military law (McDevitt, 1984-1985, 554-55).

Early British law borrowed heavily from the Articles of Gustavus Adolphus (Winthrop, 1920, 19 section 7-8). Like the Swedes, the British did not have a specific article forbidding fraternization. However, British code contained an article with a general clause, similar to the one enacted by Gustavus Adolphus. The clause was contained in Article LXIV of the Articles of War of James II (1688), “All other faults, misdemeanours and Disorders not mentioned in these Articles, shall be punished according to the Laws and Customs of War, and discretion of the Court-Martial” (Winthrop, 1920, 928). This article is considered to be the inspiration for Article 134 of the UCMJ (McDevitt, 1984-1985, 554-555). This article carried forward almost verbatim to Section XX, article III of the British Articles of War of 1765 (Winthrop, 1920, 946).

McDevitt cites one occasion on which the British used the aforementioned article to prosecute an officer who drank liquor with enlisted men (McDevitt, 1984-1985, Note 46). Carter cites 24 court-martial cases related to fraternization between 1795-1820. His summary is below:

The most frequent charge was drinking with or in the presence of enlisted personnel, both in military and public places. Other officer misconduct charged in conjunction with drinking with soldiers included smoking, dancing, fighting about women of bad character, dressing in a sergeant’s jacket and associating with privates in the guardroom, and watching and encouraging several privates in “the commission of an act of extreme violence and brutality on the person of a female” in the barracks. Charged officer misconduct unrelated to drinking included “sitting in company and associating with” a private in an officer’s barracks room, borrowing money and “necessaries” from noncommissioned officers and soldiers for private gain, messing with noncommissioned officers, and playing billiards with a soldier in a public tavern. (Carter 65-66)

The British prosecuted the aforementioned inappropriate relationships under the articles regulating general officer conduct (McDevitt, 1984-1985, 554-5), such as Article LXIV above.

Therefore, it is probable that the British considered fraternization to be a breach of the laws and customs of war.

Promotions within the British officer corps were rarely, if ever, based on merit. Rather, the British made the most extensive use of the purchase system than any other European country (Addington 1984, 2). Few officers in the British army preceding the American Revolution made rank without wealth to back them. Retired officers often were able to live on the revenue earned from the sales of commissions (Addington 1984 2). It is unlikely that the lower classes within Britain were able to penetrate the officer corps. The use of purchase systems continued until 1871 (Coates and Pellegrin, 1965, 207).

## **IV. Historical Discussion Following the American Revolution**

### **American Experiences Through 1947**

**American Revolution.** In 1775, the second Continental Congress provided for a military. A committee, of which George Washington was a member, was appointed to prepare the regulations for the army. The output became the Code of 1775, which was similar to the existing British code (Winthrop, 1920, 21-22). The Code of 1775 had a general clause included as Article L, upholding the punishment of breaches of custom:

All crimes, not capital, and all disorders and neglects, which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the articles of war, are to be taken cognizance by general or regimental court-martial, according to the nature and degree of the offense, and be punished at their discretion. (Winthrop, 1920, 957)

Contrary to the British, who punished fraternization as a breach of custom, McDevitt notes that the majority of cases involving fraternization were punished by the predecessor of Article 133 of the UCMJ (McDevitt, 1984-1985, 557), rather than the predecessors of Articles 134 and 92, as done today. Article XLVII of the Code of 1775, the predecessor to Article 133 of the UCMJ, read “Whatsoever commissioned officer shall be convicted before a general court-martial, of behaving in a scandalous, infamous manner, such as is unbecoming the character of an officer and gentleman, shall be discharged from the service” (Winthrop, 1920, 957).

The Code of 1775 was amended later in the year. As an interesting aside, the amendments contained an article which forbade officers from associating with anyone convicted of cowardice (Winthrop, 1920, 959); however, that article did not deal with superior-subordinate relationships. However, the Code of 1775 was soon replaced by the Code of 1776, which contained a provision that forbade officers to peddle to soldiers (Winthrop, 1920, 22).

During this time, many officers, including General Washington, recognized the threat to discipline that fraternization could cause. Washington explicitly warned to be “not too familiar, lest you subject yourself to a want of respect, which is necessary to support a proper command” (Schroeder, 1859, 153), and to guard against “Soldiers and Officers being too nearly on a level” (Schroeder, 1859, 159). Only three of the thirteen American Revolution general officers held prior commissions in the British military. No American officers held a British rank higher than Lieutenant Colonel (Addington 1984 13).

**Nineteenth Century.** Little has been written about the evolution of fraternization policies throughout the nineteenth century. Carter notes that there were at least 100 cases prosecuted involving fraternization during this century (Carter, 1986, 67). In addition, prosecutions for undue familiarity were now enforced in cases involving only officers or involving only enlisted (Carter, 1986, 73). Cases involving officers were prosecuted under the predecessors to UCMJ article 133. Cases involving noncommissioned officers as the offenders were pursued under the predecessors to Article 134 (McDevitt, 1984-1985, 557).

The standard thought in the American military during this time was that any person could succeed as a military professional, “irrespective of knowledge and training” (Huntington, 1957, 193). America’s reliance on the militia and the “citizen-soldier” tended to do away with the aristocratic tendencies of the officer corps. Regular officers were required to have strong technical knowledge, generally in engineering (Huntington, 1957, 195). However, the fact that West Point dominated commissions into the regular army became a concern (Huntington, 1957, 205). West Point, with its emphasis on discipline and engineering scholarship, tended to produce an officer corps that was in a caste apart from the citizen-soldier. In addition, the appointment system, which relied on endorsements from congressmen, favored the families of higher social clout (Huntington, 1957, 205). Within the militias, the company grade officers were often chosen

based upon elections, while higher ranking officers often entered service directly from civilian life, outranking those who had more experience. Promotions during this time were based on seniority. Congress insisted on seniority in favor of the British-used purchase system or the Prussian-used merit system (Huntington, 1957, 206-207).

The Civil War brought a large number of *civilian* officers into the military. Many--such as General Daniel Sickles, commander of US 3<sup>rd</sup> Corps, Army of the Potomac, during the Gettysburg campaign--were politicians appointed to command by virtue of their personal influence. In addition, many newly formed regiments elected their company grade and noncommissioned officers (Le Grand, 1861, 29). These regiments were often raised from the same towns and counties, where the elected officers were often familiar with the others in the regiments. Family members served together frequently. General Meade's son served as one of his aides. General Lee's son, Major General Fitzhugh Lee, commanded a cavalry division in Stuart's Corps, and later the cavalry corps after Stuart's death. Major (Then Second Lieutenant) Tom Chamberlain, the brother of Major General (then Colonel) Joshua Lawrence Chamberlain were both assigned to the 20<sup>th</sup> Maine Regiment at Gettysburg. Colonel Chamberlain insisted that his brother address him by rank in front of the men in order to avoid perception of favoritism. Despite influxes of these relationships into the military, proper respect and divisions between rank were enforced as much as could be expected under the circumstances. The Military Handbook, written specifically for volunteers—as opposed to professional soldiers—warned against lax discipline:

No man ever made a great captain who did not control his men with the most mathematical certainty. The soldier will not, therefore, complain at the severity of a superior who exacts the most explicit obedience to all orders, for, in hours of danger, he can rely upon that officer as his leader, and the severe discipline enforced may be means of bringing a victory, where a lax discipline would surely bring defeat and disgrace. (Le Grand, 1861, 27).

The evolution of the American legal code continued. Article 62 of the American Articles of War of 1874 became the general article.

All crimes not capital, and all disorders and neglects which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the foregoing articles of war, are to be taken cognizance of by ... court-martial, according to the nature and degree of the offense, and punished at the discretion of such court. (Winthrop, 1920, 720)

Despite the legal code released in 1874, the United States continued to consider fraternization as an offense unbecoming an officer (Cohen, 1971, 825-829). Winthrop advanced the argument that an officer was obligated to be a gentleman and to uphold the standards of the higher echelons of society (Winthrop, 1920, 711 and note 14, p 711).

**Twentieth Century.** This century started with the majority of United States Army officers favoring the prohibition of fraternization. By the end of World War II, many advocated abolishing fraternization. The early attitudes of the century are summarized in books such as *Fundamentals of Military Service*, 1916, and *Leadership and Military Training*, 1918. The author of these books, Captain Lincoln C. Andrews, warned that attempting to gain favoritism was contrary to leadership.

Do not be deluded into thinking that ... popularity is attained by easy going methods, by favoritism, by winking at delinquencies and overlooking failures in the strict performance of duty. Such popularity fades when the real test comes, and changes to disrespect, insubordination and contempt. (Andrews, 1916, 13)

Andrews than recommends “inflexibility in demanding obedience and faithful performance of duty” as the appropriate way to gain soldiers respect, in addition to “constant vigilance for welfare and interests of your men” (Andrews, 1916, 13).

Near the end of World War II, enlisted confidence in officers was low. *The American Soldier* noted that, in 1945, 75 percent of the enlisted corps did not believe that officers had the best interests in mind (Coates and Pellegrin, 1965, 256). According to the study, the enlisted man perceived that the officer corps was maintaining an obsolete caste. Part of the reasons for the

resentment were that officers were constantly reminded that they were gentlemen: “Officer and gentleman by decree of Congress” (Coates and Pellegrin, 1965, 255-6).

In line with previous report, the *Secretary of War’s Board on Officer-Enlisted Man Relationships, 1946*—better known as the “Doolittle Report,” after Lieutenant General James H. Doolittle, who served on the committee—stated that “Americans look with disfavor upon any system which grants unearned privileges to a particular class of individuals” (Secretary of War’s Board, 1946, 17). The report noted that the strain was caused by “untrained and unqualified officers who carried distinctions into the social life” (Secretary of War’s Board, 1946, 18). Strict merit based selection of officers is strongly recommended by the report (19). The period immediately following World War II appears to be the end of toleration for any caste, even if only perceived.

Devereaux claimed that the above cultural change was evident by comparing two different versions of Moss’ *Officers’ Manual* (Devereaux, 1988, 16). The 1917 edition reflects the same tone as Andrews’ writings: “Familiarity is, of course, most subversive of discipline, but you can treat your men with sympathetic consideration without being familiar with them” (Moss 1917, 50). Devereaux than stated that the 1929 version contained no such warning about familiarity (Devereaux, 1988, 16). However, the 1929 version states that “undue familiarity ... ensures their dislike” (Moss 1929, 7). However, Moss did not modify his opinion of familiarity with enlisted and leadership, as argued by Devereaux. Despite the changing social climate, it is clear that literature of the this 47-year period consistently stated that fraternization was contrary to principles of good leadership.

**Transition to Current Terminology and Legal Status.** In 1916, the Articles of War were released (Cohen, 1971, 828). Article 95 was the predecessor to Article 133 of the UCMJ. The predecessor to Article 134 of the UCMJ was Article 96:

Though not mentioned in these articles, all disorders and neglects to the prejudice to the good order and discipline, all conduct of a nature to bring discredit upon the military service, and all crimes and offenses not capital of which persons subject to military law may be guilty, shall be taken cognizance of by a general or special summary court-martial, according to the nature and degree of the offense and punished at the discretion of such court. (Cohen, 1971, 828 and Note 39)

During this period, up to the institution of the UCMJ, over 200 cases involving fraternization were prosecuted (Carter, 1986, 74). The most frequently prosecuted version, consistent with the previous century, dealt with officers drinking with enlisted (Carter, 1986, 74). Of these over 200 cases, only four specifically mentioned the word *fraternization*. The United States v. Johanns decision cited United States versus Bunker, 1943, as the earliest known usage of that terminology (US vs Johanns 880). From this point on, cases dealing with undue familiarity were labeled as fraternization. In addition, this case followed a precedent that changed the view of how fraternization cases should be prosecuted. Carter stated that the case, US v. Ponsler, was the first case that prosecuted fraternization under the general article, as opposed to the conduct unbecoming article (Carter, 1986, 77 and note 101). Contrary to Carter's statement, the US v. Bunker case, approximately two years earlier, clearly stated, "It therefore follows that the competent evidence of record is sufficient to sustain a finding of guilty ... of a violation of Article of War 96, but not of a violation of Article of War 95" (US v. Bunker 389). The phraseology used in US v. Bunker is written to imply that the Article 96 precedent was set before US v. Bunker. From this point forward, related cases were prosecuted under the Article of War 96, the predecessor of UCMJ Article 134 (US v Ponsler 50), rather than the "conduct unbecoming" article as they had been throughout the nineteenth century. This change returned fraternization to a violation of the customs of the service, and used the same justification for prosecution as the British and the Swedes used since the seventeenth century.

Although US v. Ponsler was not the precedent-setter that Carter cited it as being, the decision did make a statement relevant to this argument. The US v Ponsler decision stated that

fraternization was not “ungentlemanly” (US v Ponsler 50), but rather, “prejudicial to good order and military discipline” (US v Ponsler 50). Note that these cases clearly define fraternization as an issue contrary to good order and discipline, downplaying the significance of “gentlemanly” conduct.

### **Air Force Policies Following 1947**

Up to this point, policies forbidding fraternization have become long established throughout military history, forming a legally recognized custom of the service, and enforced under Article 134 of the UCMJ. The Air Force inherited the custom from the Army and, in a sense, from western military history. At the very least, the Air Force inherited the 172 year United States history of prosecuting fraternization as being prejudicial to order and discipline. However, the social climate and the status of officer-enlisted relationships have not been static. The Air Force, either intentionally or unintentionally, inconsistently upheld the custom prohibiting fraternization for some periods of time.

**Inconsistency in Maintaining the Custom.** The 1956 Air Force Handbook stated that “Officers and Airmen do not have social relationships” (Oulelette, 1956, 206). This handbook justified that position to maintain the appearance of impartiality (Oulelette, 1956, 206). AFR 30-1 *Air Force Standards* became the regulation that covered fraternization. The 1 August 1971 version contained no language regarding appropriate relationships, other than maintaining proper military courtesies (AFR 30-1 1971). However, the 30 September 1977 version addressed fraternization in the following manner:

Two important characteristics of the officer and enlisted relationship are loyalty and mutual respect. It is inappropriate for us to degrade or complain about each other in public or private. We are all professionals and as such we must treat each other with dignity and respect. Since we live in a very close environment and endure common hardships, officer and enlisted personnel frequently develop close friendships. However, friendships must not interfere with judgement or duty performance. (AFR 30-1 1977, 4.b.)

This paragraph implied that it was acceptable for anyone within the military to have personal relationships so long as the relationships did not interfere with duty (Flatten, 1981, 113). Furthermore, the regulation's language establishes an expectation that these relationships will occur.

The 4 May 1983 version of AFR 30-1 returned to the premise that fraternization is inappropriate. The above 1977 citation was removed, and an entire section was added covering professional relationships (AFR 30-1 1983, 7.) This revision stated "There is a long standing and well recognized custom in the military service that officers shall not fraternize or associate with enlisted members under circumstances that prejudice the good order and discipline of the Armed Forces of the United States" (AFR 30-1 1983, 7.a.). AFR 30-1 evolved into numerous regulations. The portion concerning professional relationships evolved into AFR 35-62, which stated that fraternization will be punished when it is prejudicial to good order, or when discredit is brought upon the service (AFR 35-62 1c.). The language of the regulation appeared to be concerned with consequences of the act, as opposed to the act itself, hinting that cases of fraternization which did not appear to damage good order would not be pursued. The successor to AFR 35-62, AFI 26-2909, also contains language that is concern with the consequences of a fraternization relationship: "Any relationship that harms your unit's morale, discipline or efficiency requires action" (AFI 36-2909 1995 A.1.3).

In addition to written policy, the leadership of the Air Force was also inconsistent during this period. General Carl Spaatz, the first Chief of Staff of the United States Air Force, proclaimed, "The only custom of the Air Force is to get the damn job done" (Flatten, 1981, 110). This statement implied that the Air Force divorced itself of all Army customs at the time of the split. On the other hand, General Bennie L. Davis, in a speech to the 1982 graduating class at the Air Force academy, referenced the Air Force custom prohibiting fraternization. In the same

speech, Davis admitted that there was no law or regulation that prohibited fraternization (Thompson 1).

Actions taken by the Air Force during this period demonstrated that enforcing any custom prohibiting fraternization was of little importance to the Air Force. These actions were cited as part of the US v Johanns decision. The court found that the Air Force custom against fraternization was pervasively eroded (Mahoney, 1988, 154). With the Johanns decision, the Air Force's ability to prosecute multiple types of fraternization was restricted. The decision focused on two areas, ambiguity and actions. The ambiguity was discussed above in the preceding discussion on Air Force regulations. The actions that the Air Force took that effectively destroyed the custom against fraternization follow.

First, the Air Force reversed grade distinctions. An example is giving a Chief Master Sergeant premium parking slots and VIP billeting. These privileges are given to higher enlisted grades, but not to company and field grade officers who supposedly outrank the senior NCOs. This action tends to "blur" the division between the officer and enlisted corps (Mahoney, 1988, 169).

Second, the Air Force consolidated the mess halls and clubs, allowing officers and enlisted to dine together. Of particular concern are the clubs, where the primary purpose is social. It is interesting to note the Capt Johanns met at least one of the three females with whom he fraternized with at the Minot Air Force Base NCO club, which was open to officers (Mahoney, 1988, 169-170).

The third and fourth cited reasons deal with officer/enlisted dating and marriage. The Air Force issued vague policies regarding dating. The Air Force also condoned marriages between officers and enlisted personnel. In most of these marriages, the officer was prior enlisted during the courtship period. A consistent, if conservative, Air Force policy would require one member

of such a marriage to leave the service or render charges against the members (Mahoney, 1988, 171).

Finally, Mahoney cites Military Family Housing. The Air Force is more concerned about filling available housing to the detriment of segregating officers from enlisted (Mahoney, 1988, 172). Mohoney stated that the above actions, for all practical purposes, destroyed the enforceability of policies prohibiting fraternization in the United States Air Force (Mahoney, 1988, 173).

**Fogleman Refocusing on Fraternization.** In 1996, The Air Force issued a new policy, marked by a major revision to AFI 36-2909, renamed *Professional and Unprofessional Relationships*. Fraternization was redefined by this regulation:

A personal relationship between an officer and an enlisted member which violates the customary bounds of acceptable behavior in the Air Force and prejudices good order and discipline, discredits the armed services, or operates to the personal disgrace or dishonor of the officer involved. The custom recognizes that officers will not form personal relationships with enlisted members on terms of military equality, whether on or off-duty. (AFI 36-2909 1996 2.2.1.)

This language in the new definition indicated a new resolve to not tolerate fraternization. In addition to the revised regulation, General Fogleman and Secretary of the Air Force Sheila Widnall released a memo to emphasize the importance of dealing with fraternization. In that letter, they state that it is "essential to keep in mind that the purpose of the prohibition against fraternization and unprofessional relationships is to maintain good order and discipline, to foster the trust and confidence of subordinates in their military superiors, and to prevent abuse of authority" (Fogleman and Widnall, 1997).

## V. Conclusion

### Conclusions Drawn from Discussion

The previous two chapters analyzed the factors related to fraternization within various time periods throughout history. This chapter will combine the contributions from each period and draw an aggregate conclusion.

**The Roman Era.** Noble blood was a prerequisite to become a general equivalent in the Roman military at the beginning of the Republic. The organization of the Roman military was consistent with divisions within society at the beginning of the Republic, with infantry coming from the poorer classes, and command coming from the nobility. However, the concept of the centurion and promotion by merit suggests that the Romans recognized that maintaining societal class structure was not always in the best interests of the Roman military. Additionally, the centurions' elevated status, earned through merit, carried over into the society. Tribunes were drawn from the wealthier classes early in the period. As Rome evolved, tribunes were promoted through the ranks. The military did not restrict itself to maintaining the class divisions found within society.

Although no actual cases of fraternization, or regulations prohibiting fraternization, have been cited in within the Roman military, it has been demonstrated that regulations did exist that governed some contact between superiors and subordinates. Carter stated that these were designed to eliminate problems with undue familiarity (Carter, 1986, 62). Carter's statement is not directly supported in any literature reviewed for this study; however, it is not contradicted either. To state that the laws regulating conduct between ranks were designed to maintain discipline could be consistent with the promotion by merit system. To say that these regulations

maintained a social class system is inconsistent with the Roman rank structure. Therefore, any laws regulating contact between superiors and subordinates were unlikely to be designed to maintain a static social class structure.

Finally, it seems unlikely that the Roman culture would have any impact on the enforcement of fraternization policies. The Roman Empire had a distinguished history of military takeovers whenever the military leadership was unsatisfied with the state of politics. It is clear from analyzing the Roman military that policies regulating interactions between ranks were designed to maintain the effectiveness of Roman leadership.

**The Middle Ages.** Most literature states that the custom prohibiting fraternization began during the middle ages, generally to maintain the social caste system. Society had clear and distinct class divisions between nobility and peasant, with a small merchant middle class. The military class originated under the vassal system, where soldiers became indebted to their lords. This military class did carve a distinguished place for itself, but—as shown in Chapter III—this class did not start as nobility, nor did this class ever achieve a social status equal to that of the nobility. Additionally, tournaments and skill competition often determined status—rather than wealth or family heritage—suggesting that birthright was not a substitute for skill. The nobles provided generalship, not because they were chosen by society as leaders, but because they paid for the upkeep of their private armies. Therefore, although this military class did play an integral role within the feudal society, the military class did not align itself in a manner consistent with the divided society.

The warrior of this period was very individualistic; it is unlikely that superior-subordinate relationships developed to the same extent found during the Roman era or the succeeding standing army era. No laws or customs were found which regulated conduct between superiors and subordinates within the military class during the Middle Ages. Custom forbade interaction

between the military class and the peasant class, but these interactions were between societal factions, not between superiors and subordinates. Therefore, the custom of forbidding interaction between peasants and knights does not apply to this argument.

Finally, the culture would have little or no impact on the ability to enforce any fraternization policies that would have been in place. If policies had been in place, the nobles—who owned the armies—would have been in a different class than the vassals. Therefore, any prohibition of societal contact between these two classes, the leader and the followers, would have been easy to enforce.

**Age of Standing Armies.** If there is any age where the composition of the armies mirrored the divisions within society, this era comes closer than any other. The officer corps of the time were dominated by nobility. Those of the lower classes filled the ranks of these armies. As time progressed, some individuals were able to obtain commissions by merit, but they were in the minority. Personal wealth and family heritage often drove the promotion systems.

Strict fraternization policies clearly were being enforced throughout this time period. The legal grounds for prosecuting these policies were under general clauses which evolved from King Gustavus Adolphus' Code of Articles, which clearly stated the reasoning behind prosecution as "repugnant to Military Discipline" (Winthrop, 1920, 914). Therefore, the legal basis for prosecution was to maintain good order and discipline. Other legal clauses regulated interaction between ranks, as discussed in Chapter III. The Prussians recognized the need to not show favoritism, as exercised when young noblemen apprenticed themselves in the enlisted ranks.

Any policies prohibiting fraternization would have been easy to enforce. The class divisions of society aligned perfectly with the superior-subordinate relations within the militaries. To conclude that the fraternization policies existed for the sole purpose of maintaining the class

structure merely because the class structure existed does not consider any evidence beyond the surface. It is likely that the policies of the time had a component in place that was designed to enforce good order and discipline.

**The American Military.** Conclusions from the American military are known discussed. The American Revolution through the end of the nineteenth century are discussed first. Then the Twentieth century prior to the formation of the Air Force is discussed, and, finally, the Air Force is discussed.

**Through the Nineteenth Century.** The American military traditionally was not founded on a nobility-based officer corps. The citizen-soldier aspect of the American military left a small corps that greatly expanded during wartime. The small corps of officers tended to be elitist, due to the political appointment system of West Point. In addition, the officer corps often swelled with politicians and prominent citizens when the nation mobilized for war. This stratification had the effect of maintaining a division between the officers and the soldiers serving under them. The promotion system, based on seniority, did little to either help or hinder the division.

The fraternization policies were clearly based on maintaining good order and discipline in the eighteenth century. The legal cases were built upon “good order and discipline,” while the leaders maintained the need to avoid undue familiarity. In the nineteenth century, the prosecution base changed to the “conduct unbecoming” clause, implying that it is ungentlemanly to fraternize rather than contrary to discipline. However, military handbooks maintained that fraternizing would damage morale. In addition, enlisted-enlisted fraternization was prosecuted under the general clause. Therefore, it is likely that prosecution under the “conduct unbecoming” clause took place more as a convenience, rather than as a reference to the purpose underlying the prohibition.

The culture would have had made it somewhat more difficult to enforce fraternization at that time than during the European standing army era. The First Amendment to the Constitution of the United States ingrained freedom of assembly into the general populace. However, the relatively small size of the peacetime American army would have had an isolating effect on the army's policies contrasted to civilian ideals.

**Twentieth Century through 1947.** Despite the more senior officers tending to be from a higher class, the officer corps as a whole tended to be from a more diverse background. In addition, the promotion system transitioned from one based upon seniority to one based upon merit. More so than in the previous century, the composition of the military tended to match that of the civilian society.

Legal basis for prosecution transitioned back to the general clause initiated by Adolphus, affirming that good order and discipline was the primary reason for forbidding fraternization. Most of the handbooks of the period tended to condemn undue familiarity.

Despite the regulations, a growing segment of the military believed that fraternization was not prejudicial to good order and discipline. Recommendations such as those provided in the "Doolittle" report advocated eliminating the prohibition of fraternization.

**United States Air Force.** The Air Force inherited the structure and policies of the Army. During the last 50 years, the promotion policy has been based as much on merit as possible. The Air Force originally maintained the fraternization policies in writing. The Air Force, with the exception of the 1977 AFR 30-1, publicly maintained that fraternization policies were necessary for maintaining good order and discipline. However, selective enforcement led to the vagueness that has characterized the fraternization policy until through much of the period.

The most prominent change in the enforcement of fraternization in this century has been the rise of public opinion. The perception that the prohibition of fraternization is to maintain an obsolete caste system severely stressed the Air Force's ability to enforce the policy.

## **Summary**

### **Investigative Questions.**

- What were the original/historical criteria for prohibiting fraternization?

The historical design for prohibiting fraternization was to maintain good order and discipline. Despite the fact that several of the standing European armies based their commissions on class, it is not mandatory to conclude that policies prohibiting interaction between the ranks were designed to maintain the classes. It is clear that many policies were designed to make better leaders out of those that held the commissions. The higher classes tended to be favored for their presumed leadership abilities, and also due to their wealth and influence, which helped support the cost of military organizations. The European militaries punished cases of fraternization under the justification that undue familiarity was repugnant to military order and discipline. Although the United States inherited fraternization policies from the Europeans, it is clear that the policies were not just inherited for the sake of tradition, or for the sake of maintain social status. American leaders, including General Washington, saw the need to stem undue familiarity within the army. Despite the fact that through most of the nineteenth century fraternization was punished under the "conduct unbecoming" article, the dangers of undue familiarity continually resurfaced as the underlying purpose. The investigation leads to the conclusion that the original purpose for prohibiting fraternization was based on military discipline, not on a caste system.

- How have the policies concerning fraternization evolved throughout history?

The policies evolved as a custom of the service. The first legal aspects regulated some interactions between superiors and subordinates. Little evolution of fraternization policies occurred during the Middle Ages. The Code of Articles of King Gustavus Adolphus, which can be traced as an influential document in the development of the UCMJ, laid the current chain of legal progression. Adolphus' general clause forbade conduct repugnant to military discipline, which was adopted as the model for the current Article 134 of the UCMJ. The custom maintained relatively constant from the time of Gustavus Adolphus until the present, with few minor variations. The Doolittle Report recommended eliminating regulation of social conduct; however, that recommendation was never adopted. The 1977 AFR 30-1 encouraged fraternization; that policy was reversed six years later. The current Air Force policy has a clear lineage throughout Western military history.

- Is the current justification consistent with the logical evolution of fraternization policies?

Yes. "To maintain trust and confidence in the decisions of officers, subordinates must believe that ... decisions ... are motivated not on the basis of personal friendships but by what is best for the organization and accomplishment of the mission" (Fogleman and Widnall, 1997). This policy is consistent with the original criteria for fraternization: to maintain good order and discipline.

**Conclusion.** The historical purpose of prohibiting fraternization is to maintain the discipline and good order of a military organization, and to maintain the soldiers' faith in their officers by avoiding any perceptions of favoritism. This custom prohibiting fraternization appears to have been applied consistently from at least the time of the Roman Empire. Throughout periods of Western military history, the class structure of society drove the structure of the military. The parallelism between the class divisions made enforcement of the prohibition of fraternization natural. Officers tended not to socialize with enlisted, consistent with the norms

of their culture. Policies prohibiting fraternization, designed to maintain discipline, also had the side effect of enforcing the caste. This side effect gave the appearance that the purpose of fraternization might have been to maintain class stratification. Determining ranks within the military class during the middle ages contradicts the caste argument. Article 45 of King Gustavus Adolphus' code, in addition to practices within the European armies, also contradicts the caste argument.

Historically, it has not been difficult to enforce fraternization policies, since the superior-subordinate relationship fell conveniently into the class divisions of society. However, current society no longer divides itself into rigid class structures, and the society doesn't as easily accept what appears to be—from the surface—a policy that enforces caste structure.

## **Recent Developments**

On 29 July 1998, the Department of Defense, under Secretary William Cohen, approved a single service fraternization policy. This policy forbids “dating, sharing living accommodations, engaging in intimate or sexual relations [outside of a marriage], business enterprises, commercial solicitations, gambling, and borrowing between officer and enlisted regardless of their service” (Weible, 1998, 11). Consistent with recent history, this new policy will not affect officer-enlisted marriages (Weible, 1998, 11). This policy will unite all of the United States armed services under a single policy for the first time. This policy leans toward that invoked by the Air Force under the leadership of General Fogelman. The stated purpose of this policy is to maintain standards of good order and discipline (Weible, 1998, 11).

## **Suggestions for Future Research**

This study focuses on the development of fraternization in Western military history as it pertained to the United States Air Force. Fraternization is treated generically; gender-specific

fraternization and nepotism were treated generically, while fraternization with the enemy is ignored. In addition, sister services and non-United States militaries were addressed only when directly relevant to the United States Air Force. The following are suggestions for related research that might prove useful.

- Most Western nations should have a military evolution similar to that of the United States.  
Do other Western nations have a fraternization policy similar to the United States Air Force? If so, what is the purpose of the prohibition and how does it compare to the United States Air Force's policy?
- Eastern civilization has evolved in a culture dramatically different from Western culture.  
Have eastern nations developed a fraternization policy? If so, how did it involve in context with the evolution of eastern culture, and what were the criteria for developing the policy?
- Do civilian organizations find it necessary to enforce a fraternization policy? If so, do these policies compare to that of the United States Air Force?

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## Vita

Capt Jeffrey C. Russell was born on 22 August 1970 in Barnesville, Ohio. He graduated from Union Local High School in 1989 and entered the United States Air Force Academy. He graduated as a distinguished graduate with a Bachelor of Science degree in Aeronautical Engineering in June 1993. He received his commission on 2 June 1993 upon graduation from the Air Force Academy.

His first assignment was to Columbus AFB MS where he worked as a design engineer in the 14<sup>th</sup> Civil Engineering Squadron. After attending the Aircraft Maintenance and Munitions Officers' Course, where he attained distinguished graduate, he was reassigned to Dyess AFB TX in September 1994, as a maintenance and munitions officer. He worked in the 9<sup>th</sup> Bomb Squadron as Officer-in-Charge, Aircraft and Specialists Sections, and then as Flight Commander, Munitions Flight, 7<sup>th</sup> Equipment Maintenance Squadron. In May 1997, he entered the School of Logistics and Acquisition Management, Air Force Institute of Technology (AFIT). Upon graduation from AFIT, Capt Russell will be reassigned to Air Mobility Command at Scott AFB, IL.

Capt Russell is married to the former Felicia Shockey of Colorado Springs, CO. He has one son, Caleb, who was born during his stay at AFIT.

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# REPORT DOCUMENTATION PAGE

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